RULE AGAINST PERPETUITIES — SUSPENSION OF OWNERSHIP — NEW YORK RULE. — A father created a trust fund for the maintenance of his family, the income to go to his wife and two daughters, then living, upon his death; and one half of the income to go to each daughter upon the death of both parents, the principal to be distributed equally between the daughters when they should attain the age of thirty-five. A statute provided that such a suspension of absolute ownership of personal property, for more than two lives in being at the date of the instrument, was invalid. (1909 N. Y. CONSOL. LAWS, c. 41.) The wife claimed an enforceable interest in the trust, irrespective of the validity of the limitations to the daughters. *Held*, that this claim be allowed. *Carrier* v. *Carrier*, 123 N. E. 135 (N. Y.).

Since 1828, the common-law rule against perpetuities has been substantially altered by New York legislators, who have conceived its sole object to be a limitation of restraint on alienation. See GRAY, RULE AGAINST PERPETUITIES, 3 ed., § 748. The artificial limit of two lives in being on the period of suspension of absolute ownership has superseded the natural common-law rule of lives in being. 1909 N. Y. CONSOL. LAWS, c. 41; LAWS 1909, c. 45; PERSONAL PROPERTY LAW, § 11. That this arbitrary rule invites litigation is shown by the fact that under it the issue of remoteness has been presented in well over four hundred cases, as compared with a single one previous to its adoption. See GRAY, *idem*, §§ 749, 750. The principal case is typical of the large majority of them. And unfortunately, in the early decisions, trusts containing any illegal limitations were held invalid *in toto*. *Lorillard* v. *Coster*, 5 Paige, 172; *Armory* v. *Lord*, 9 N. Y. 403. Now, however, valid provisions of the instrument are enforced, if the rejection of the invalid limitations will effect no unjust distribution of the estate. *Tiers* v. *Tiers*, 98 N. Y. 568; *In re Mount*, 185 N. Y. 162, 77 N. E. 999. In the principal case, the trust to endure for two lives only would accomplish a distinct purpose of the settlor, — the maintenance of the family unit during the lives of the parents. The saving rule, being thus applicable, was rightly invoked to sustain the wife's interest.

SALES — CONDITIONAL SALES — WHETHER INCLUDED UNDER ACT REGARDING MORTGAGES. — The plaintiff sold and delivered certain machinery under an instrument providing that title should remain in the seller until full payment of price. A recording statute thus defined mortgages: "All deeds . . . conveying . . . property . . . for the purpose . . . of securing the payment of money, whether . . . from the debtor to the creditor, or from the debtor to some third person in trust for the creditor." (1906 FLA. GENL. STAT., §§ 2494, 2496.) The above instrument was not recorded. The seller replevied from a purchaser from the buyer. If the instrument was a mortgage, the seller could not recover. *Held*, that he could recover. *Dobson Printer's Supply Co.* v. *Corbett*, 82 So. 804 (Fla.).

A transaction wherein possession is delivered but passing of title is conditioned upon payment of price is a typical conditional sale. *Nichols* v. *Ashton*, 155 Mass. 205, 29 N. E. 519; *American Harrow Co.* v. *Deyo*, 134 Mich. 639, 96 N. W. 1055. A mortgage differs from this in that the original property owner is or becomes the debtor. *Campbell Printing Co.* v. *Walker*, 22 Fla. 412, 1 So. 59. And a sale with mortgage back to seller differs from it in that title passes at once. See *Frick & Co.* v. *Hilliard*, 95 N. C. 117; *Chicago Cottage Organ Co.* v. *Crambert*, 78 Ohio, 149, 84 N. E. 788. So in most jurisdictions statutes relating to mortgages are not held applicable to conditional sales. *Nichols* v. *Ashton*, *supra; Campbell Printing Co.* v. *Walker*, *supra*. But the legal effect of each is substantially the same. See *Chicago Ry. Equipment Co.* v. *Merchants' Bank*, 136 U. S. 268, 283. It is submitted that the difference in method by which the legal result is reached is immaterial, and that the opposite view is preferable. *Hart* v. *Barney Co.*, 7 Fed. 543 (Ky.). See 16 HARV. L. REV. 370. But the

statute in the principal case undertakes to define specifically what shall be included in the term "mortgage." It clearly contemplates transactions in which the original property owner is or becomes the debtor. It was therefore rightly judged not to include conditional sales.

SOVEREIGN — TELEGRAPH AND TELEPHONE COMPANIES — LIABILITY TO SUIT OF TELEGRAPH AND TELEPHONE COMPANIES UNDER FEDERAL CONTROL. — An action was brought against a telegraph company under federal control for delay in delivery of a telegram. The defense was that the defendant company was being operated by the Postmaster General on behalf of the United States. *Held*, defense insufficient. *Witherspoon & Sons* v. *Postal Telegraph & Cable Co.*, 257 Fed. 758 (Dist. Ct., E. D. La.).

The United States cannot be sued without its consent. *Stanley* v. *Schwalby*, 162 U. S. 255. This immunity extends to governmental agents and agencies. *Maganab* v. *Hitchcock*, 202 U. S. 473. When the transportation systems were taken under federal control, Congress authorized suits against them, but prohibited issuance of process against property so taken over. See 40 STAT. AT L. 451. Some courts, in action brought against these systems, have treated the Director General of Railroads as the proper party defendant. *Rutherford* v. *Union Pacific R. Co.*, 254 Fed. 880; *Dahn* v. *McAdoo, Director General of Railroads*, 256 Fed. 549. The courts that treat the systems as being also proper parties defendant recognize them nevertheless as governmental agencies. *Jensen* v. *Lehigh Valley R. Co.*, 255 Fed. 795; *Gowan* v. *McAdoo*, 173 N. W. 440 (Minn.); *Johnson* v. *McAdoo, Director General of Railroads et al.*, 257 Fed. 757. The government assumed control over the telegraph and telephone systems for the same reasons and purposes as produced control over transportation. See 40 STAT. AT L. 904. By proclamation, the President took possession of all systems and assumed complete control, which might or might not be exercised through the then owners and managers. See 40 STAT. AT L. 1807. It would seem, therefore, that they likewise became governmental agencies. Congress made no provision for possible suits against them. Nevertheless, judgments have been rendered against these systems, operating under federal control, when the action was commenced prior to federal control. *Western Union Telegraph Co.* v. *Huffman*, 208 S. W. 183 (Tex.); *Mummaw* v. *Southwestern Telegraph & Telephone Co.*, 208 S. W. 476 (Mo.); *Danaher* v. *Southwestern Telegraph & Telephone Co.*, 209 S. W. 74 (Ark.). Also, after federal control, one court allowed an injunction to issue against a telephone company. *State* v. *Dakota Central Telephone Co. et al.*, 171 N. W. 277 (S. D.). Moreover, the companies have secured relief in their own names. *City of Amarillo* v. *Southwestern Telegraph & Telephone Co.*, 253 Fed. 638; *Postal Telegraph & Cable Co.* v. *Call, District Judge*, 255 Fed. 850. On the other hand, they have also been held governmental agencies and so not proper parties. *Southwestern Telegraph & Telephone Co.* v. *City of Houston*, 256 Fed. 690; *Railroad Commissioners of Florida* v. *Burleson et al.*, 255 Fed. 604. And an injunction has been refused because the suit was in substance against the United States. *Public Service Commission* v. *New England Telephone & Telegraph Co.*, 122 N. E. 567 (Mass.). It might be argued, in support of the principal case, that suits are included in the authority, given by the President's Proclamation, to continue operation of the systems in the usual and ordinary course of business. See 40 STAT. AT L. 1807. But the President or his ministers have no power to authorize actions against the United States or its agencies. *Maganab* v. *Hitchcock*, *supra*.

STATUTE — CONSTRUCTION — ESTATE TAX OF FEDERAL INHERITANCE TAX. — A petition was brought by an executor to determine whether, in the absence of any express directions in the will, the federal estate tax should be charged entirely against the residue of the estate or apportioned *pro rata* among all the